

DEPARTMENT OF HEALTH SERVICES

Patrick Sisk, Embalmer
License No. 001718
117 Buffalo Bay
Madison, CT 06443

Petition No.: 880519-30-006

MEMORANDUM OF DECISIONPROCEDURAL BACKGROUND:

On 10/27/89, 12/5/89 and 3/21/90 the Connecticut Board of Examiners for Embalmers and Funeral Directors (hereinafter referred to as the Board) convened to hear the case of Patrick Sisk, Embalmer.

A Statement of Charges consisting of two counts and dated 7/18/89 was brought by the Department of Health Services (hereinafter referred to as the Department) against Patrick Sisk (hereinafter referred to as the Respondent). In the First Count, the Department alleged that the Respondent failed to properly undertake the wake, funeral, and burial of Thomas Eagan as contracted for by Thomas Eagan's family in that:

- a. The body of Thomas Eagan was not displayed at his wake; and/or
- b. The body displayed to the Eagan family at the scheduled wake was not that of Thomas Eagan; and/or

- c. The body of Thomas Eagan was not buried according to the wishes of the decedent or his family; and/or
- d. The body of Thomas Eagan was improperly taken to a crematorium for cremation, without an express request for permission for such cremation from the decedent or his family.

The Second Count charged the Respondent with deficiently performing his contract to cremate the body of William Gormley, in that:

- a. The body of William Gormley was prepared against the wishes of the decedent or his family; and/or
- b. The body of William Gormley was displayed against the wishes of the decedent or his family.

According to the Statement of Charges, these failings constitute a violation of Connecticut General Statutes § 20-227.

The Notice of Hearing dated 8/24/89 and the Statement of Charges were sent to the Respondent by Certified Mail - Returned Receipt Requested. An answer to the Statement of Charges was filed with a Special Defense to both counts. In

his Special Defense, the Respondent claimed that "any deficiencies with regard to the burials of either Thomas Eagan or William Gormley were not caused by any deficiencies on the part of Sisk Brothers, Inc. or Patrick H. Sisk, but rather would have been the result of improper identification of the bodies by others and by misrepresentation on the part of the morgue at Yale New Haven Hospital". No response to the Special Defense was filed.

Each member of the Board involved in this decision was present at the hearing and/or reviewed the record of the hearing. This decision is based entirely on the evidence presented at that hearing.

The standard of proof required in this matter and applied in this decision is a preponderance of the evidence. In re: Polk, 449 A.2d 7, Ferguson v. Hamrich 388 So. 2d 981; Sherman v. Commission on Licensure to Practice the Healing Art, 407 A.2d 595 (D.C. App. 1979).

This Memorandum of Decision sets forth the Board's findings of fact and conclusions of law. To the extent that findings of fact actually represent conclusions of law, they should be so considered and vice versa. For reference see SAS Institute Inc. v. S & H Computer Systems, Inc. 605 F. Supp. 816 (M.D. Tenn. 1985).

FINDINGS OF FACT:

After consideration of the entire record the findings of fact are the following:

1. Patrick Sisk is and was at all times referenced in the Statement of Charges the holder of Connecticut Embalmer license number 001718 (See Defendant Ex. 1 - Answer).
2. The Respondent was provided the opportunity to attend an informal "compliance" conference. (State Ex. A).
3. The Statement of Charges and Notice of Hearing were sent to the Respondent by Certified Mail - Return Receipt Requested. (State Ex. B).
4. The hearing began on 10/27/89, continued on 12/5/89 and concluded on 3/21/90. There were several continuances during the course of the hearing.
5. The Respondent was present and was represented by counsel at the hearing.
6. Patrick Sisk is the principal stockholder of Sisk Brothers, Inc., a group of funeral homes, located in New Haven County. (See Defendant Ex. 1 - Answer).

7. On or about 10 May 1988, Sisk Brothers, Inc. was contacted and agreed to arrange for and undertake the wake and burial of Thomas Eagan (See Defendant Ex. 1 - Answer)
8. Credible testimony was received from Edward Eagan and Patricia Julianelle, children of Thomas Eagan, that Sisk Brothers, Inc. via Patrick Sisk undertook to provide the services cited above (Tr. 10/27/89 P. 14-46).
9. The identity of the body the Sisk Brothers Funeral Home received on May 10, 1988 and thought to be Thomas Eagan's was not ascertained by the Respondent or his employees either through wristbands or toe tags (Dept. Ex. K, Affidavit of Sean R. Dolan, Tr. 3/21/90 pp. 276-289; Tr. 3/21/90 p. 309).
10. Both Edward Eagan and Patricia Julianelle testified credibly that when they arrived at Sisk Funeral Home to view Thomas Eagan's body prepared for the wake that another body, not the body of Thomas Eagan, was displayed to them by Patrick Sisk. (Tr. 10/27/89, p. 18, 38, 40 & 41).

11. The body embalmed and displayed as cited in 10. above was later identified as William Gormley by his son-in-law. (Tr. 10/27/89 P. 55 lines 5-10).
12. No wake of the body of Thomas Eagan occurred. (Tr. 10/27/89 p. 41).
13. The family believes that the body of Thomas Eagan was cremated although that fact is not a certainty (Tr. 10/27/89 p. 20). A family member of Thomas Eagan provided credible testimony that the body of Thomas Eagan was to be buried after a wake and a church service (Tr. 10/27/89 p. 40). Contrary to the family's wishes, what were hoped to be the ashes of Thomas Eagan were buried. (Tr. 10/27/89 p. 20).
14. On or about 5/10/88 Sisk Brothers Inc. was contacted and agreed to perform a direct cremation of the body of William Gormley (See Defendant Ex. 1 - Answer).
15. Credible testimony was received from Mary Gormley, the wife of William Gormley, that Sisk Brothers Inc. undertook to provide the services cited in 14. above (Tr. 10/27/89 p. 50).

16. The body of William Gormley was embalmed (Tr. 12/5/89 p. 171) and displayed contrary to the wishes of the decedent (Tr. 10/27/89 p. 49).

DISCUSSION AND CONCLUSIONS OF LAW:

Connecticut General Statutes, Section 20-227 provides in pertinent part that:

The Department of Health Services may refuse to grant a license or an inspection certificate or the board may take any of the actions set forth in section 19a-17 against a licensee, registrant or holder of an inspection certificate if it finds the existence of any of the following grounds: ... (4) incompetency, negligence or misconduct in the carrying on of such business or profession.

1. Patrick Sisk is a licensee as cited in Connecticut General Statutes §20-227.
2. The Respondent was provided with the opportunity to demonstrate compliance with all lawful requirements for the retention of his license as required by Connecticut General Statutes §4-182(c).
3. Notice of the hearing was properly sent and sufficiently provided information as mandated by Connecticut General Statutes §4-177 and §4-182.

4. The hearing was held in accordance with Chapters 54 and 385 of the Connecticut General Statutes and Sections 19-2a-1 through 19-2a-30 of the Public Health Code. The Board heard testimony and received documentary evidence from both parties on each count in the complaint.
5. The answer filed complied with Section 19-2a-18 of the Public Health Code.
6. With regard to the FIRST COUNT the Respondent failed to properly identify the body it received with an illegible tag and which was thought to be Thomas Eagan but was in fact William Gormley. The Board finds that the Respondent's conduct was negligence in violation of Connecticut General Statutes §20-227(4). Further the Board finds that as a consequence of that negligent act the Respondent also violated Connecticut General Statutes §20-227(4) when:
 - 1) he failed to display the body of Thomas Eagan at his wake;

2) he displayed the body of someone other than Thomas Eagan to his family at his scheduled wake; and

3) the body of Thomas Eagan was not buried according to the wishes of his family.

7. The Department effectively withdrew the allegation set out in Paragraph 4d. of the FIRST COUNT. (Tr. 12/5/89 p. 175 lines 1-3) and therefore the Board makes no finding on this allegation.

8. With regard to the SECOND COUNT the Respondent failed to properly identify the body it received with an illegible tag and which was thought to be Thomas Eagan but was in fact William Gormley. The Board finds that the Respondent's conduct was negligence in violation of Connecticut General Statutes §20-227(4). Further the Board finds that as a consequence of that negligent act the Respondent also violated Connecticut General Statutes §20-227(4) when:

1) he prepared the body of William Gormley against the wishes of the decedent; and

2) he displayed the body of William Gormley against the wishes of the decedent.

9. The Board rejects the Special Defenses of the Respondent due to his independent duty as an embalmer to identify any and all bodies received by Sisk Brothers (See Findings of Fact no. 9.).

ORDER:

Pursuant to the authority vested in it by Connecticut General Statutes 19a-17, the Board in the case against Patrick Sisk Embalmer, Petition No. 880519-30-006, hereby orders the following:

- 1) For each count of the Statement of Charges the Respondent be assessed a civil penalty of five hundred dollars (\$500.00) for a total due of one thousand dollars (\$1,000.00). Certified check or money order should be made payable to "Treasurer, State of Connecticut" and sent within 90 days to: Lynn Hurley, Public Health Hearing Office, Department of Health Services - 150 Washington Street, Hartford, CT 06106.
- 2) The Board hereby reprimands the Respondent for failing to properly identify the body received by the Respondent on 5/10/88 and thought to be the body of Thomas Eagan, but which was in fact the body of William Gormley.

- 3) The policy of Sisk Brothers, Inc. on the identification of a body received by the facility be placed in writing and submitted to the Board within 60 days of receipt of this decision.

Connecticut Board of Examiners for
Embalmers and Funeral Directors

DATE _____

by Paul E. Driscoll, Chairperson

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